

Message Text

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ACTION AF-10

INFO OCT-01 EUR-12 IO-13 ISO-00 CIAE-00 DODE-00 PM-04
H-01 INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01
SP-02 SS-15 NSCE-00 SSO-00 USIE-00 INRE-00 DHA-02
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FM AMEMBASSY CAPE TOWN
TO SECSTATE WASHDC NIACT IMMEDIATE 6049
AMEMBASSY BONN NIACT IMMEDIATE
AMEMBASSY LONDON NIACT IMMEDIATE
AMEMBASSY OTTAWA NIACT IMMEDIATE
AMEMBASSY PARIS NIACT IMMEDIATE
USMISSION USUN NEW YORK NIACT IMMEDIATE
INFO AMEMBASSY DAR ES SALAAM
AMEMBASSY GABORONE
AMEMBASSY LAGOS
AMEMBASSY LUSAKA
AMEMBASSY MAPUTO
AMEMBASSY PRETORIA

C O N F I D E N T I A L SECTION 1 OF 2 CAPE TOWN 0698

E.O. 11652: GDS
TAGS: PINS SHUM WA SF
SUBJ: NAMIBIA: LAWS AND REGULATIONS WHICH MIGHT IMPEDE
FREE ELECTIONS

REF: A) CAPE TOWN 0666, B) CAPE TOWN 0693

1. THIS REPORT IS A JOINT DOCUMENT CONCURRED IN BY THE
AMBASSADORS OF CANADA, FRANCE, GERMANY AND THE UNITED
KINGDOM, AND THE AMERICAN CHARGE IN CAPE TOWN. ACTION
ADDRESSEES ARE REQUESTED TO PASS COPIES TO THE APPROPRIATE
REPRESENTATIVES AND MINISTRIES OF THE FIVE. THE REPORT
IS NOT BEING TRANSMITTED SEPARATELY THROUGH RESPECTIVE
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INDIVIDUAL COMMUNICATIONS CHANNELS.

2. SUMMARY: DESPITE SAG INSISTENCE THAT EXISTING
STATUTES WOULD BROADLY PERMIT FREE ELECTIONS TO BE
HELD IN NAMIBIA, THERE ARE MANY INSTANCES IN WHICH THE
AUTHORITIES ARE GRANTED BROAD DISCRETIONARY POWERS
WHICH COULD READILY BE USED TO HAMPER CAMPAIGNING AND

ELECTIONS. ALTHOUGH IT IS PROBABLY NOT POSSIBLE TO IDENTIFY EVERY CASE IN WHICH AN AMENDMENT MIGHT BE REQUIRED, WERE EVERY LAW AND REGULATION TO BE CHANGED, IT SEEMS FEASIBLE TO INSURE AN APPROPRIATE LEGAL BASIS FOR FREE ELECTIONS BY BRINGING INTO EFFECT A NEW ELECTORAL LAW OR REGULATION, PROVISIONS OF WHICH WOULD OVERRIDE EXISTING OBJECTIONABLE PROVISIONS. END SUMMARY.

3. THE OBJECTIVES OF THE FIVE POWERS REGARDING LEGISLATION AND REGULATIONS WERE STATED IN THE FOLLOWING TERMS:

"WE SUGGESTED THAT SOUTH AFRICA WAIVE THE APPLICATION OF ALL LEGISLATION AND REGULATIONS WHICH MIGHT IMPEDE THE FULL PARTICIPATION OF ALL NAMIBIANS IN THE POLITICAL PROCESS. THE SAG SUGGESTED THAT, IF ANY SUCH EXISTED, SOME OF THIS WOULD BE TAKEN CARE OF BY THE REGULATIONS FOR THE ELECTORAL PROCESS. THE FIVE WILL REVIEW LEGISLATION AND REGULATIONS AND SUGGEST TO THE SAG THOSE WHICH IN OUR VIEW WOULD NEED TO BE CHANGED."

4. REVIEW OF THIS SUBJECT BY FIVE POWER AMBASSADORS ON MAY 2 LED TO IDENTIFICATION OF TWO BROAD CATEGORIES OF LEGISLATION INVOLVED; FIRST IS THE BODY OF ADMINISTRATIVE LAWS, REGULATIONS AND PRACTICES WHICH CONSTITUTE APARTHEID POLICY; AND SECOND, THE SEVERAL PIECES OF INTERNAL SECURITY LEGISLATION UNDER WHICH THOSE THOUGHT TO BE ENGAGED IN ACTIVITIES ENDANGERING THE SECURITY OF THE STATE ARE USUALLY DETAINED, CHARGED, OR OTHERWISE RESTRAINED.

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ADMINISTRATIVE LEGISLATION:

5. THE BASIC LEGISLATION UNDER WHICH BLACKS ARE GOVERNED IN NAMIBIA IS THE NATIVE ADMINISTRATION PROCLAMATION OF 1928. THIS PROVIDES CERTAIN DESIGNATED OFFICERS WITH BROAD POWERS TO PROCLAIM AND ENFORCE A VARIETY OF CATEGORIES OF REGULATION AND PROCEDURE. THERE IS ALSO A VARIETY OF LEGISLATION AND REGULATION DEALING WITH PLACE OF RESIDENCE, PLACE AND TYPE OF EMPLOYMENT, SEGREGATION OF FACILITIES, AND MOVEMENT BETWEEN ADMINISTRATIVE AREAS. AMONG APPLICABLE LEGISLATION ARE A SERIES OF PASS LAWS UNIQUE TO NAMIBIA, AND LAWS APPLYING TO NATIVE CONTRACT EMPLOYMENT. IT IS CONCEIVABLE THAT OFFICIALS IN THE ADMINISTRATION OF NAMIBIA EVEN AT A LOW LEVEL COULD MAKE USE OF THESE CONTROLS TO LIMIT THE MOVEMENT OF INDIVIDUALS IN WAYS WHICH WOULD IMPEDE THE POLITICAL AND INFORMATIONAL CAMPAIGNING, PRESENCE AT MEETINGS, OR EVEN ABILITY TO REACH A POLLING PLACE. EXHAUSTIVE RESEARCH WOULD BE REQUIRED TO IDENTIFY ALL SUCH INSTANCES,

WERE ONE TO CONSIDER AMENDING THE WHOLE BODY OF EXISTING
LEGISLATION AND REGULATIONS OF THIS KIND.

6. SECURITY LEGISLATION: THE PRINCIPAL PIECES OF
SECURITY LEGISLATION APPLIED IN NAMIBIA ARE:

- A. RIOTOUS ASSEMBLIES ACT OF 1956 (EXTENDED TO APPLY
TO SOUTH WEST AFRICA IN 1976)
- B. TERRORISM ACT NO. 83 OF 1967.
- C. PROCLAMATION R17 OF 1972, APPLYING ONLY TO OVAMBO-
LAND. R17 WAS EXTENDED TO APPLY ALSO TO KAVANGO AND
EASTERN CAPRIVI BY R89 OF 1976, WHICH ALSO ESTABLISHED
A SYSTEM OF CONTROLLED SECURITY ZONES IN THE NORTHERN
AREAS.

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C O N F I D E N T I A L SECTION 2 OF 2 CAPE TOWN 0698

C O R R E C T E D C O P Y (TEXT--SUBPARA 6.D.)

D. INTERNAL SECURITY AMENDMENT ACT NO. 79 OF 1976,
WHICH EXPANDED THE PROVISIONS OF THE SUPPRESSION OF
CONAINISM ACT OF 1950.

WHILE THIS LEGISLATION PROVIDES FOR THE CONTROL OF INTERNAL SECURITY PROBLEMS ALONG LINES USED IN MANY OTHER COUNTRIES, IT IS DISTINGUISHED BY ALL-ENCOMPASSING LANGUAGE AND THE GRANTING OF WIDE DISCRETIONARY AUTHORITY TO DESIGNATED GOVERNMENTAL OFFICERS. THESE ARE EMPOWERED IN MOST CASES TO ARREST AND TO CHARGE INDIVIDUALS, OR IN SOME CASES TO DETAIN AND HOLD WITHOUT CHARGE, TRIAL OR LEGAL RECOURSE, ANY INDIVIDUAL WHO IS THOUGHT TO BE CONFIDENTIAL

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INVOLVED IN ANY ACTIVITY CONSIDERED BY THE AUTHORITIES TO ENDANGER THE SECURITY OF THE STATE. PERSONS THOUGHT TO BE IN POSSESSION OF ANY INFORMATION BEARING ON SUCH ACTIVITIES MAY ALSO BE DETAINED. IN MANY CASES, DEFINITIONS ARE SO BROAD AS TO BE UNLIMITED FOR ALL PRACTICAL PURPOSES. IN ADDITION, NO MEETINGS EXCEPT FOR NARROWLY DEFINED SPORT, RELIGIOUS, OR OFFICIAL GATHERINGS, MAY BE HELD WITHOUT SPECIFIC PERMIT, AND THE MOVEMENT OF INDIVIDUALS INTO, OUT OF, RESIDENCE OR WORK WITHIN THE GENERAL AREA ARE SUBJECT TO TIGHT CONTROLS BY DESIGNATED OFFICERS.

7. REPRESENTATIVES OF THE FIVE ATTRIBUTE SAG CLAIMS THAT THERE ARE NO POLITICAL PRISONERS, ONLY CRIMINALS, TO THE FACT THAT THIS ALL-EMBRACING SECURITY LEGISLATION ENABLES THE COURTS TO CONVICT POLITICAL ACTIVISTS FOR CONTRAVENING ANY OF THE SEVERAL LAWS AND REGULATIONS. THESE COVER ACTIONS WHICH MAY NOT BE TAKEN WITHOUT PERMISSION, OR WHICH ULTIMATELY PROVE TO BE HOSTILE IN SOME WAY TO THE STATE OR TO PUBLIC ORDER, AS FOR EXAMPLE A MEETING HELD WITHOUT ALL REQUISITE PERMITS, OR STATEMENTS ALLEGED TO EXACERBATE RACIAL RELATIONS, INCITE TO RIOT, OR TO OTHERWISE HAMPER NORMAL ADMINISTRATION. THERE IS, HOWEVER, A GENUINE AND LEGITIMATE ASPECT TO LEGISLATION WHICH ENABLES RESPONSIBLE AUTHORITIES TO PRESERVE PUBLIC ORDER.

8. TO ACHIEVE THE OBJECTIVE OF OBTAINING A WAIVER OF APPLICATION OF ALL LEGISLATION AND REGULATIONS WHICH MIGHT IMPEDE THE FULL PARTICIPATION OF ALL NAMIBIANS IN THE POLITICAL PROCESS, THE FIVE REPRESENTATIVES BELIEVE THAT RATHER THAN ATTEMPTING TO AMEND EXISTING LEGISLATION, WHICH WOULD BE TIME CONSUMING AND DIFFICULT, IF NOT IMPOSSIBLE, IT WOULD BE MORE EXPEDIENT AND EFFECTIVE TO SEEK ADOPTION OF A NEW ELECTORAL LAW DESIGNED TO OVERRIDE THE VARIOUS EXISTING SYSTEMS

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AND CONTROLS. WE MIGHT WAIT TO SEE WHAT SOUTH AFRICA
ITSELF SUGGESTS. ALTERNATIVELY, INTERNATIONAL LEGAL
AUTHORITIES COULD DRAFT ILLUSTRATIVE LEGISLATION
ESTABLISHING A SUITABLE ELECTORAL SYSTEM, AND SPECIFYING
THE REQUISITE FREEDOMS OF MOVEMENT, ASSEMBLY, SPEECH AND
PUBLICATION WHICH ARE ESSENTIAL TO PEACEFUL POLITICAL
CAMPAIGNING AND ELECTIONS. SUCH ILLUSTRATIVE LEGISLATION
SHOULD INJOIN OR PROHIBIT SAG AUTHORITIES OR ANYONE ELSE
FROM INTERFERING WITH THE FREE EXERCISE OF POLITICAL
RIGHTS OR FROM MISUSING THE OPPORTUNITIES FOR ASSEMBLY
OR PUBLIC ADDRESS TO STIR VIOLENCE. THIS DRAFT COULD
THEN BE DISCUSSED WITH THE SOUTH AFRICAN GOVERNMENT.
WE UNDERSTAND THAT SUCH ARRANGEMENTS COULD BE PROMULGATED
BY PROCLAMATION RATHER THAN REQUIRING LEGISLATIVE ACTION
BY THE SOUTH AFRICAN PARLIAMENT. ASSURING THE PROPER
EXECUTION OF SUCH LEGISLATION WOULD BE THE TASK OF THE
INTERNATIONAL AUTHORITY ESTABLISHED FOR THE
PURPOSE, RESOLVING DISPUTES THROUGH A BODY SUCH AS THE
INDEPENDENT COMMISSION OF JURISTS PROPOSED BY THE CONTACT
GROUP IN ITS DISCUSSIONS WITH THE SAG.NELSON

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